Supreme Court, U.S.
FILED

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IN THE

Supreme Court of the United States

In re the Discipline of:

Scott A. Everard,
Attorney at Law,
WSBA # 20218.
Petitioner.

On Petition for Writ of Certiorari to the
Washington State Supreme Court

PETITION FOR WRIT OF CERTIORARI

Scott A. Everard
Pro-Se Petitioner
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QUESTIONS PRESENTED FOR REVIEW

1. Does the United States Constitution prohibit a Default Order without the proper expiration of length of time to Answer the charges in a Formal Lawyer Discipline Complaint?

2. Does a Lawyer Discipline Court Rule which prohibits further notice of proceedings and ability to participate after a default (including the Default Hearing where damages\punishment are exacted upon the lawyer) violate Due Process, where the responding Attorney has filed a Notice of Appearance?

3. Is the violation of a Lawyer Discipline Court Rule, constructed to allow time to object to the appointment of a quasi-judicial hearing officer, before the hearing officer takes any action, evidence of "Bias" itself, depriving the attorney of a constitutional fair hearing; where the hearing officer did in-fact take "major" action before expiration of the time period for objection?

4. Does the United States Constitution require the burden of proof (persuasion) of "clear and convincing" evidence in a lawyer discipline proceeding?

5. Does Disciplinary Counsel violate an attorney's rights to Appellate Review, when it improperly advises the highest court of the jurisdiction that the time for review has expired and an "entry of an appropriate order" should take place; whereupon the Court takes action upon the representation, and when in-fact, there still remains time to file a Motion for Discretionary Review?

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BASIS FOR JURISDICTION

The Washington Supreme Court entered a "majority" Order disbarring, Scott A. Everard, from the practice of law on December 12, 2000.

A timely Motion & Brief in support of Reconsideration of the decision to disbar, was filed by Petitioner Everard. The Washington Supreme Court denied Reconsideration of the Order to Impose Disbarrment on March 7, 2001.

This Court has jurisdiction pursuant to 28 U.S.C. § 1257 in conjunction with U.S. Supreme Court Rule 13(1)&(3) to review the denial of Reconsideration, incorporating & addressing the Order of Disbarrment and the denial of the Motion for Discretionary Review & Reconsideration.

Petitioner's allegation of the unconstitutionality of Washington Supreme Court Rules for Lawyer Discipline

("RLD") 4.10A(a)&(b), in failing to provide proper notice and time before a default, and for further notice after the wrongful default (i.e., including the default hearing), was argued. No notice was provided to the Washington Attorney General, as to the Constitutionality of the WA Court Rule. However, notice was provided to the Washington State Bar Association.

CONSTITUTIONAL PROVISION & COURT RULE

5th Amendment United States Constitution

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

14th Amendment United States Constitution (1868)

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are

citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

WASHINGTON RULE FOR LAWYER DISCIPLINE ("RLD")

RLD 4.2(b) – APPOINTMENT OF HEARING OFFICER PANEL:

* * *

(b) Disqualification. Either the respondent lawyer or disciplinary counsel may seek the disqualification of the hearing officer or any hearing panel member for cause.

(1) A request for disqualification of a hearing officer or panel member shall be filed in writing within 20 days of service upon the respondent lawyer of the name of the officer or panel member challenged. The request shall set forth in detail the reason for the request.

RLD 4.4(b) – NOTICE TO ANSWER – Notice When Hearing Officer or Panel Not Appointed

* * *

(b) Notice When Hearing Officer or Panel Not Appointed. When at the time a formal complaint is filed no hearing officer or panel has been appointed to conduct the proceeding, the formal complaint and a notice to answer in the form prescribed in section (a), but omitting reference to the hearing officer or panel, shall be served on the respondent lawyer. In such case disciplinary

counsel shall serve upon the lawyer a separate notice of hearing officer or panel promptly upon appointment of a hearing officer or panel, and no action shall be taken by disciplinary counsel in the proceeding except action permitted under Title 3 until such notice is given.

RLD 4.5(c) – ANSWER -- Time to Answer

* * *

(c) Time To Answer. The respondent lawyer shall have 20 days from the date of service of the formal complaint and notice to answer to file his or her answer. Failure to file an answer as required may constitute grounds for discipline and for taking of an order of default according to the procedures set out in rule 4.10A.

RLD 4.10A(a)(2) – Default Proceedings – Notice

* * *

(2) Notice. The respondent lawyer shall be served with a written notice of motion for an order of default at least 20 days before the date of entry of the order of default. The notice of a motion for an order of default shall include the following:

(i) The date of filing of the notice to answer and formal complaint and the date of service.

(ii) That the respondent attorney has not timely filed an answer as required by rule 4.5.

(iii) That disciplinary counsel intends to seek an order of default.

(iv) The following notice substantially in the following form:

YOUR DEFAULT WILL BE ENTERED IF NO ANSWER IS FILED WITH THE BAR ASSOCIATION WITHIN 20 DAYS OF SERVICE OF THIS NOTICE OF A MOTION FOR AN ORDER OF DEFAULT. ENTRY OF AN ORDER OF DEFAULT WILL RESULT IN THE

ALLEGATIONS SET FORTH IN THE FORMAL COMPLAINT(S) BEING ADMITTED AND DISCIPLINE RECOMMENDED OR IMPOSED BASED ON THOSE ADMITTED ALLEGATIONS. IF THE ORDER OF DEFAULT IS ENTERED, YOU WILL LOSE THE OPPORTUNITY TO PARTICIPATE FURTHER IN THESE PROCEEDINGS UNLESS AND UNTIL THE ORDER OF DEFAULT IS VACATED ON A TIMELY MOTION SETTING FORTH THE PROPER GROUNDS. SEE SECTION (c). THE ENTRY OF AN ORDER OF DEFAULT MEANS THAT YOU WILL RECEIVE NO FURTHER NOTICES REGARDING THESE PROCEEDINGS EXCEPT THOSE REQUIRED BY SECTION (b)(2).

* * *

RLD 4.10A(a)(4) – DEFAULT PROCEEDINGS – Entry of Order of Default

* * *

(4) Entry of Order of Default. If the respondent lawyer fails to file a written answer with the Bar Association within 20 days after service of the notice of the motion for entry of an order of default, the hearing officer or panel, shall, upon proof of proper service of the notice of motion for an order of default, enter an order finding the respondent lawyer in default. The order of default shall contain notice substantially in following form:

* * *

AN ORDER OF DEFAULT HAS BEEN ENTERED AGAINST YOU BECAUSE OF YOUR FAILURE TO TIMELY FILE AN ANSWER TO THE FORMAL COMPLAINT(S) FILED IN THIS PROCEEDING. THE ALLEGATIONS SET FORTH IN THE FORMAL COMPLAINT(S) HAVE BEEN DEEMED ADMITTED AND DISCIPLINE MAY BE IMPOSED UPON YOU BASED ON THOSE ADMITTED ALLEGATIONS. YOU MAY NOT PARTICIPATE FURTHER IN THESE

DISCIPLINARY PROCEEDINGS UNLESS AND UNTIL THE ORDER OF DEFAULT IS VACATED ON A TIMELY MOTION SETTING FORTH THE PROPER GROUNDS. THIS ORDER OF DEFAULT MEANS THAT YOU WILL RECEIVE NO FURTHER NOTICES REGARDING THESE PROCEEDINGS EXCEPT THOSE REQUIRED BY SECTION (b)(2).

RLD 4.10A(b)(1)&(2) – DEFAULT PROCEEDINGS – Proceedings After Entry of an Order of Default

* * *

(b) Proceedings After Entry of an Order of Default.

(1) Service of the order of default shall be as provided in rule 12.1.

(2) After entry of an order of default no further notices shall be served upon the respondent lawyer except for copies of the decisions of the hearing panel and the Disciplinary Board.

RLD 4.11(b) – EVIDENCE AND BURDEN OF PROOF – Burden of Proof

* * *

(b) Burden of Proof. Disciplinary Counsel shall have the burden of establishing an act of misconduct by a clear preponderance of the evidence.

* * *

RLD 7.3(b) – DISCRETIONARY REVIEW – Respondent Lawyer May Petition

* * *

(b) Respondent Lawyer May Petition. A respondent lawyer wishing to seek discretionary review by the Supreme Court of a decision of the Board must file a petition for review with the Supreme Court within 25 days of service of the decision of the Board upon the respondent lawyer.

STATEMENT OF CASE

Washington Attorney Scott A. Everard was disbarred, improperly & unconstitutionally, based upon: 1) a improperly noticed Motion for Default; 2) the improper calculation of days for the Default Order; 3) ignoring of the time to file a bias objection to the quasi-judicial Hearing Officer; 4) no notice of the improper Default Hearing and inability to participate; 5) application of a unconstitutional burden of proof; and 6) Bar Counsel's violation of Appellate Review by misinformation to the Washington Supreme Court about the time left for Respondent to act.

Pre-Hearing

Petitioner Everard was served with a *Formal Complaint* on April 6, 1998, charging misconduct.

Petitioner personally served a Notice of Appearance on Office of Disciplinary Counsel

(hereinafter **"ODC'**) on April 27, 1998, titled "*Acknowledgment of Service*" (i.e., examine pleading for substance over form or title) requesting, "preservation of and affording of all constitutional, court rule, statutory and\or common law rights of privileges"). (See, *Acknowledgment* lns. 17-19).

The *Formal Complaint*, when filed on April 6, 1998, failed to include a order appointing a Hearing Panel Officer "*Order Appointing Hearing Panel Officer"*, in accordance with RLD 4.4(b).

A Hearing Panel Officer is either appointed at the time of filing of the Formal Complaint, or Special Notice must be sent for the Hearing Officer's appointment.

No action shall be taken by ODC before the appointment of a Hearing Officer is made by the Disciplinary Board, pursuant to RLD 4.4(b).

A lawyer responding to disciplinary charges in Washington also has a 20-day time period to object to the

Appointment of a Hearing Officer in accordance with RLD 4.2(b)(1) (i.e., a recognition of the Constitutional right to have the facts determined and the sanction imposed by an impartial body, by way of a objection procedure to the appointment, before any action taken). See, Morrissey v. Brewer, 408 U.S. 471 (1972), and Gagnon v. Scarpelli, 411 U.S. 778 (1973) – each as cited in Gillers, Regulation of Lawyers: Problems of Law and Ethics (1998), pg. 791.

A lawyer answering a Formal Complaint has 20 days to Answer the Complaint, starting from the service of the Notice of Appointment of Hearing Panel Officer. RLD 4.5(c) & RLD 4.4(b).

Logically, only after the Hearing Officer Appointment and service thereof, can Bar Counsel "take action" and consequently file and serve Notices and Motions for Default.

Logically, only after the expiration of 20 days, without objection to the appointment of the Hearing Officer, for Bias, can the Hearing Officer **take any action** (except perhaps, to continue the matter beyond the 20 days or transfer the matter).

The failure to follow RLD 4.2(b)(1) (and RLD 4.4(b) in combination) is **per-se evidence** of "bias" itself.

Contrary to the prohibition in RLD 4.4(b), ODC "**took action**" by filing & serving a *Notice and Motion for Order of Default* dated **May 11, 1998**, for failing to Answer the *Formal Complaint* and in using the **time expired** from sending the Notice & Motion on May 11, in calculating the default.

The Hearing Officer was appointed by the Disciplinary Board on **June 8, 1998**. (See, *Order Appointing Hearing Panel Officer*). Notice of Appointment was mailed to the parties by the Disciplinary Board Clerk on **June 9, 1998**. (See, *Order*

Appointing Hearing Panel Officer). After the time for mailing (expiration of the 3-day mailing rule and weekends excluded, per RLD 12.12) the Hearing Officer defaulted Petitioner on the first day after obtaining documents, Monday, **June 15, 1998**. (See, *Order of Default*).

The alternative method for appointment of a Hearing Officer, by special separate notice under RLD 4.4(b), was received (service complete) by Petitioner Everard on **June 25, 1998**, some 10 days after the default.

Even if a person was to use the date of mailing of June 9, 1998, then no action could take place until after **July 2, 1998**, (i.e., 20 days plus 3 days for mailing) at a minimum, as compared to action taken on **June 15, 1998**.

Attorney disciplinary rules "must be strictly construed, resolving ambiguities in favor of the attorney charged", and a court must abide by its own disciplinary

rules. It violates procedural due process not to follow the court's own disciplinary rules of procedure. See, In re Sealed Appellant, 194 F.3d 666, 670 (5th Cir. 1999); Matter of Thalheim, 853 F.2d 383,388-89 (5th Cir. 1988).

Indeed, the Thalheim Court stated:

> Attorney disbarment and suspension cases are quasi-criminal in character. In re Ruffalo, 390 U.S. 544, 551, 88 S.Ct. 1222, 1226 (1968); Charlton v. F.C.C., 543 F.2d 903, 906 (D.C.Cir. 1976); Matter of Abrams, 521 F.2d at 1108 (Adams, J., dissenting). **Accordingly, the court's disciplinary rules are to be read strictly, resolving any ambiguity in favor of the person charged**. Moreover, the same principle of construction follows from the fact that it was the court that drafted these rules. **The court wrote its own rules; it must abide by them**.(emphasis in bold).
> Id. at 388.

Thalheim further articulates:

> When a court undertakes to sanction an attorney for violating rules, **it is incumbent upon the sanctioning court to observe scrupulously its own rules of disciplinary procedure**. If the rules are inadequate, the court can proceed to amend them. **But unless and until such amendment occurs, attorneys have the right to rely upon their rules. A court cannot ignore and circumvent its rules at will to the detriment of those covered by them.** (emphasis in bold).
> Id. at 390.

Where Notice is defective pursuant to a Court Rule, there is no notice, nor service of notice. In Peralta v. Heights Medical Center, Inc., 485 U.S. 86, 108 S.Ct. 896 (1988), this Court announced that where a court rule required service of a citation within 90 days of its issuance, then the late service was a nullity depriving the court of personal jurisdiction over a money damages default case, even though there was no dispute that the debtor received notice and could have responded. Indeed, this Court stated:

> ... a judgment entered without notice or service is constitutionally infirm. An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under the circumstances, to apprise interested parties of the pendency of the action and afford them the opportunity to present their objections. [citation omitted]. Failure to give notice violates the most rudimentary demands of due process of law. [multiple citations omitted]

Id. at 485 U.S. 84-85, 108 S.Ct. 899.

The Peralta Court went on to say:

> ... only wiping the slate clean would have restored the petitioner to the position he would have occupied had due process of law been accorded to him in the first place. The Due Process Clause demands no less in this case.

Id. at 485 U.S. 86, 108 S.Ct. 900.

Petitioner was not provided any further notice of any proceedings in accordance with Washington Rule for Lawyer Discipline 4.10A(b)(2) (i.e., including further documents).

The failure to provide Notice of the Default Hearing is unconstitutional. See, Peralta v. Heights Medical Center, Inc., 485 U.S. 86, 108 S.Ct. 896 (1988).

Washington Bar Counsel drafted *proposed Findings, Conclusions*, and drafted a comprehensive *Association Brief*, recommending a **4-month suspension,** based upon the unlawful Default Order. Bar Counsel in the Association Brief compared similar cases in

Washington, based upon the alleged negligent conduct of Petitioner Everard.

Hearing Level

A telephonic Default Hearing was held between only the Hearing Officer and Bar Counsel. Petitioner was not provided Notice of this Default Hearing and thus could not participate, per RLD 4.10A(b)(2). Petitioner could not even mitigate the damages\sanctions, during the hearing.

The Hearing Officer ruled that a "clear preponderance of the evidence" established Petitioner's misconduct, pursuant to RLD 4.11(b).

Clear preponderance of the evidence is unconstitutional in lawyer disciplinary proceedings, according to the United States 5th Circuit Court of Appeals, "... **the Constitution requires clear and convincing evidence before a lawyer may be disbarred.**" See, Gillers, Regulation of Lawyers: Problems of Law and Ethics (1998), pg. 791 citing In re Medrano, 956 F.2d 101,

102 (5th Cir. 1992); see also, In re Sealed Appellant, 194 F.3d 666, 670 (5th Cir. 1999); Matter of Jaques, 972 F.Supp. 1070 (E.D. Tex 1997), cited in dissent of In re Albers, 2000 MT 8, ¶83, 995 P.2d 923 (discussing, "carefully delineated elements of due process specifically for attorney disciplinary proceedings" … "requiring burden of clear and convincing evidence"); and Painter v. Abels, 998 P.2d 931, 940-41 (Wyo 2000)(equal protection & due process requires clear & convincing).

Clear Preponderance of Evidence is a lower standard according to the Ninth Circuit Court of Appeals noted the differing evidentiary standards in U.S. v. Motamedi, 767 F.2d 1403, 1406 (9th Cir. 1985)(discussing pretrial detention order and the risk of flight), wherein the Court stated:

> "... In the trial court and this court, the Government must establish risk of flight by a clear preponderance of the evidence, **not by the higher standard of clear and convincing evidence**. …" (emphasis in bold).

Id. at 1406.

The Hearing Officer made oral amendments to the charges, as well as findings and conclusions and a recommendation of disbarrment, based at least in-part upon the unlawful oral amendments. The *Default Hearing Transcript* was incorporated into the *Findings, Conclusions & Recommendation*, as "*Exhibit A*". However, the Washington record fails to have in it a document called "*Exhibit A*" attached to the *Findings, Conclusions & Recommendation*; and likewise Petitioner Everard was never served with the *"Exhibit A"* to the *Findings, Conclusions & Recommendation.*

Post – Hearing Matters

The Disciplinary Board approved and adopted **in totality**, the "*Hearing Officer's Findings of Fact, Conclusions of Law and Recommendation*," on November 23, 1998. (See pre-printed fill-in-blank form – *Disciplinary Board Order Regarding Hearing Officer's*

Findings of Fact, Conclusions of Law and Recommendations hereinafter "***Board Order***.

A copy of the Disciplinary Board's Order recommending disbarrment was mailed to Petitioner Everard on November 23, 1998, by way of certified mail return receipt requested, as required by RLD 12.1(a)(3) & RLD 6.7(h). (*See Board Order*).

A decision of the Disciplinary Board becomes final unless appealed to the WA Supreme Court, within 15 days of service of the decision of the Board, under RLD 6.7(h) in conjunction with RLD 7.2 & RLD 12.12 (i.e., 3 day mailing rule) or a Motion for Discretionary Review is filed within 25 days of the Disciplinary Board's Order per RLD 7.3 in conjunction with RLD 12.12. Indeed, even ODC recognizes the Discretionary Review method, as ODC's letter of July 28, 2000, explicitly notes this standard, infra.

ODC sent a letter with disciplinary documents to the Washington Supreme Court on 12-14-98, stating Petitioner

had been served (but not stating ODC had proof of service or providing such required proof) and improperly misrepresenting the time to do anything in the Washington Supreme Court had run. In fact, the letter from ODC stated:

> Following a default hearing, the Disciplinary Board entered an order recommending that lawyer Scott A. Everard be disbarred. Mr. Everard was served with a copy of this order by certified mail [with return receipt requested] on November 23, 1998. The time for Mr. Everard to file an appeal has run. Accordingly, **we are sending the record to the Supreme Court for review and entry of an appropriate order**. (emphasis in bold).

Petitioner Everard did not receive the Board's Order until 12-14-98 (i.e., the same day as the letter from ODC to the WA Supreme Court). (See *Board Order* Return Receipt attachment with signature date of 12-14-98).

Unfortunately, a letter was sent by the WA Supreme Court, based upon the 12-14-98 ODC letter, and Petitioner Everard was dissuaded from acting (i.e., file Motion for

Discretionary Review). Indeed, the 12-17-98 letter from the WA Supreme Court says:

> "The documents will be circulated to the Court for review and entry of an appropriate order."

(*See Letter of 12-17-98 from WA Supreme Court to Everard*). Even if a person were to count the 25 days from the date of mailing (plus 3 days for mailing) per RLD 7.3(b) & RLD 12.12, the calculation would be **Monday, December 21, 1998**, and not December 14, 1998.

Petitioner Everard's former lawyer, Gonzaga Law Professor Frank Conklin, entered this case on January 6, 1999, and a Stay was issued pending resolution of Petitioner Everard's serious medical condition; with Petitioner Stipulating to a Interim Suspension on March 2, 1999.

Petitioner, through his then counsel, filed a Motion to Vacate Default on May 21, 1999. (See *Motion to Set Aside Default*). Petitioner by his then Counsel faxed his

extremely detailed verified Answer and required Declaration in Support of Motion to Vacate Default on June 3, 1999. (See *Answer & Declaration Pursuant to RLD 4.10A*).

The same Hearing Officer whom signed the Default Order was re-appointed to hear the Motion to Vacate Default. An objection to the appointment and Motion to Recuse with Authorities was filed. (*See Motion to Disqualify Hearing Officer Timothy Esser and Memorandum*). After some time, the Disciplinary Chairperson then ordered the replacement of the first Hearing Officer (i.e., Timothy Esser of Pullman,WA), to hear the Motion to Vacate Default.

Second Hearing Officer, Joseph M. Mano, Jr., (from Chehalis,WA – across the entire state) in a letter to ODC and Gonzaga Law Professor Conklin, ordered that the parties had until January 30, 2000 (a Sunday) to provide additional materials for consideration. (See *Letter from*

Hearing Officer Mano to ODC & Conklin, dated December 23, 1999).

The second Hearing Officer considered the papers, documents and pleadings that were selected & sent by the Board Clerk, as specifically set forth in his Order denying Motion to Vacate.

Conspicuously absent from the Second Hearing Officer Order was the listing of consideration of the *Default Hearing Transcript*, as well as the required ruling regarding the 4 (four) equitable factors for a claim based upon excusable neglect and the medical\mental condition of Petitioner. (See, *Order Denying Motion to Vacate*).

Failure to specifically address the equitable factors for vacating a default based upon the allegation of "**excusable neglect**" is an abuse of discretion. See, Pioneer Investment v. Brunswick, 507 U.S. 380, 394 (1993) and Bateman v. U.S. Postal Service, 219 F.3d 1029, 1032-33 (9th Cir. 2000).

A revised Notice of Appeal was timely filed on February 14, 2000, with the Board. (See, *Notice of Appeal - Board*). A 3 (three) page Order signed by the Chairperson of the Board denied the Appeal to Vacate, as dated July 17, 2000. (See, *Order Denying Respondent's Appeal of Hearing Officer's Decision of Motion to Vacate Default*).

ODC then sent a letter with documents to the WA Supreme Court dated July 28, 2000, again requesting entry of an "appropriate order". Conspicuously absent from the documents list, as sent by ODC, is Petitioner Everard's *Answer* and *Declaration Pursuant to RLD 4.10A*. However, of further extreme significant note is ODC's statement to the Court in a footnote stating:

> "The 25-day deadline for filing a RLD 7.3 Petition for Discretionary Review passed on December 21, 1998."

Compare the representation of ODC in letter of 12-14-98 to WA Supreme Court (previously discussed), that

on 12-14-98 the time had run and an appropriate order should be entered by the WA Supreme Court, to the ODC letter dated above (i.e., 07-28-00) that the deadline was 12-21-98; and therefore an "appropriate order" could not have been "appropriate" as of 12-14-98. (See. *Letter from ODC to WA Supreme Court dated 07-28-00.*

On August 11, 2000, Professor Conklin filed a *Motion to Stay Disbarrment Proceedings* and attached as exhibits copies of the *Answer, Declaration Pursuant to RLD 4.10A* and a copy of the *Hearing Transcript.* Professor Conklin also moved the Court to grant Discretionary Review. The exhibits (*Answer* and *Declaration*) were attached as they were not provided by ODC or the Disciplinary Board Clerk, to the Washington Supreme Court for review and consideration. (See, *Motion to Stay Disbarrment Proceedings*, without attachments and *Motion for Discretionary Review*).

The Washington Supreme Court denied Discretionary Review in a divided decision on October 11, 2000. Petitioner, Pro-Se, then timely filed a Motion for Reconsideration on October 19, 2000, with Brief. (See, *Motion for Reconsideration of Denial of Discretionary Review Pro-Se* with attachments). This Reconsideration Motion was denied by the Washington Supreme Court Chief Justice on October 26, 2000.

The Washington Supreme Court Chief Justice then scheduled a special En Banc conference due to the division of the court. The hearing was held December 7, 2000, without the ability for oral argument or submission of additional materials. The divided court ruled by "**majority**" vote to adopt the Board's Order, dated December 12, 2000.

Petitioner Everard then filed a *Motion for Reconsideration of Imposition of Disbarrment* on

December 22, 2000. Petitioner also timely filed *a Brief in Support of Motion* on January 5, 2001.

The Motion for Reconsideration was denied on March 7, 2001, as a majority of the Court voted to deny re-hearing the case.

REASONS FOR WRIT

In accordance with Rule 14(h) and Rule 10, Petitioner alleges as follows:

1) The Washington Supreme Court has permitted a Default Order to stand, in violation of the time to respond only a few days into the running of the 20-day time period to Answer a Formal Complaint, as triggered by the appointment of the Hearing Officer in the case, which was compounded by the violation of Bar Counsel in filing & serving documents in prohibition of taking any action before the Hearing Officer's appointment. The Default Order based decision, violates all reasonable

standards for granting defaults under the U.S. Constitution.

2) The Washington Supreme Court has permitted the omission of its own Discipline Court Rule (RLD 4.2(b)(1)) with regard to the time period within which a charged lawyer may object to the appointment of a Hearing Officer. This same Hearing Officer took "major action" in defaulting Petitioner, upon receipt of his appointment, before the expiration of the time. Such ruling ignores the fundamental right to a fair hearing.

3) The Washington Supreme Court Rule for Lawyer Discipline 4.10A(b)(2), provides that no further notices shall be provided to a responding Attorney (e.g., Default Hearing, etc.), even though the Attorney has submitted a Notice of Appearance. Such Disciplinary Rule conflicts with sister state, Texas' rule for providing Notice of trials\hearings of all settings, even within the attorney disciplinary context, and the failure to provide

notice allows an attorney to vacate any default. Hanners v. State Bar of Texas, 860 S.W.2d 903 (1993). Said decision is based upon federal law and this Court's decision in Peralta v Heights Medical Ctr Inc, 485 U.S. 80, 84 (1988).

4) The Washington Supreme Court in its Lawyer Discipline Rules, pursuant to 4.11(b), permits the low burden of proof of "clear preponderance of the evidence" to be used in discipline proceedings, instead of the required "clear and convincing evidence". Such Rule is either clearly unconstitutional or there is a vast majority of the Courts across the country conflicting with Washington, using the "clear and convincing" standard and articulating the need for the higher burden.

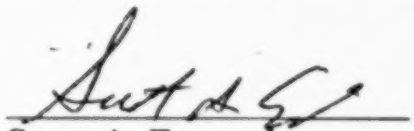
5) A authority on the subject of attorney discipline, has questioned whether there exists appellate rights in disciplinary matters. See, Gillers, Regulation of Lawyers: Problems of Law and Ethics (1998), pg. 791. This Court

should decide if attorneys enjoy appellate rights in the disciplinary process, and if so whether Bar Counsel violates appellate rights when s\he makes representations to a Court that it is time for "entry of an appropriate order", which causes the Court to take action, when the time for notice of an appropriate order has not passed.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be granted.

RESPECFULLY submitted this 10th day of August, 2001



Scott A. Everard
Pro-Se Petitioner
1211 East Empire
Spokane, WA 99207-3021
(509) 489-4531

APPENDIX

THE SUPREME COURT OF WASHINGTON

IN RE:	)	BAR NO. 20218
	)	
SCOTT A. EVERARD,	)	ORDER
	)	
ATTORNEY AT LAW	)	

The Disciplinary Board of the Washington State Bar Association filed an Order Adopting the Hearing Officer's Recommendation of disbarment in the matter of Scott A. Everard. The Court did consider the order and the documents filed in this matter on December 7, 2000, En Banc Conference. Now, by a majority vote of the court, it is hereby

ORDERED:

The Disciplinary Board Order is approved. Scott Everard is disbarred from the practice of law effective immediately.

DATED at Olympia, Washington this 12th day of December, 2000.

/s/ Richard P. Guy
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

In Re:	)	BAR NO. 20218
	)	
SCOTT A. EVERARD,	)	ORDER DENYING MOTION
An Attorney at Law	)	FOR RECONSIDERATION

The Court having considered the Respondent's Motion of Imposition of Punishment of Disbarment for Default;

Now, therefore, it is hereby

ORDERED:

That the Respondent's motion is denied.

DATED at Olympia, Washington this 7th day of March, 2001.

/s/ Garry L. Alexander
CHIEF JUSTICE